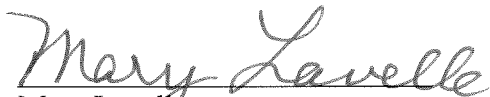


**CERTIFICATION OF CITY CLERK**

**ORDINANCE NO. 240.3**

I, Mary Lavelle, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. 240.3 of the City of Milpitas, that this Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of the City Council held on the 16<sup>th</sup> of June, 2015, and that the Ordinance was published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 22<sup>nd</sup> day of June, 2015.

A handwritten signature in cursive script that reads "Mary Lavelle". The signature is written in dark ink and is positioned above the printed name and title.

Mary Lavelle  
Milpitas City Clerk

**URGENCY**

**NUMBER:** 240.3

**TITLE:** AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 6 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SUPPLEMENTAL WATER USE RESTRICTIONS AS REQUIRED BY STATE LAW

**HISTORY:** This Ordinance was introduced by the City Council at its meeting of June 16, 2015, upon motion by Councilmember Giordano and was adopted immediately as an urgency ordinance pursuant to provisions of California Government Code Sections 36934 and 36937 and Water Code Sections 350, et seq. and 375, et seq. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo, Giordano, and Grilli

NOES: (0)


ABSENT: (0)

ABSTAIN: (0)

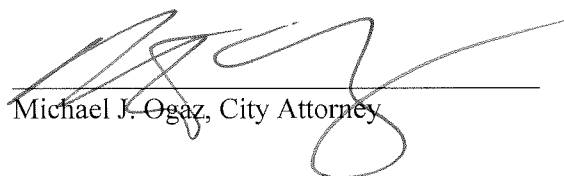
ATTEST:

  
Mary Lavelle, City Clerk

APPROVED:

  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

  
Michael J. Ogaz, City Attorney

**RECITALS:**

**WHEREAS**, Government Code Sections 36934 and 36937 authorize a city to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety; and

**WHEREAS**, water is a precious resource shared by all and is needed to sustain life; and

**WHEREAS**, California Water Code Sections 10610 through 10657 require urban water retailers, such as the City of Milpitas, to adopt an Urban Water Management Plan and Water Shortage Contingency Plan every five (5) years; and

**WHEREAS**, the Milpitas City Council adopted the 2010 Urban Water Management Plan and Water Shortage Contingency Plan on June 7, 2011; and

**WHEREAS**, on January 17, 2014, the Governor issued a Proclamation declaring a State of Emergency due to severe drought conditions; and

**WHEREAS**, on January 28, 2014, the Santa Clara Valley Water District, one of the City's water suppliers, declared a water supply shortage and requested ten percent (10%) conservation; and

**WHEREAS**, on January 31, 2014, the San Francisco Public Utilities Commission, one of the City's water suppliers, declared a water supply shortage and requested ten percent (10%) voluntary conservation; and

**WHEREAS**, on February 25, 2014, the Santa Clara Valley Water District requested mandatory twenty percent (20%) conservation due to the continued drought conditions in the State of California; and

**WHEREAS**, on April 25, 2014, the Governor suspended the application of the California Environmental Quality Act's applicability to the State Water Resource Control Board's adoption of emergency regulations pursuant to Water Code Section 1058.5; and

**WHEREAS**, on July 15, 2014, the State Water Resources Control Board adopted Resolution No. 2014-0038 adopting an emergency regulation for statewide urban water conservation requiring water retailers to implement their Water Shortage Contingency Plans; and

**WHEREAS**, on August 19, 2014, the Milpitas City Council adopted an Urgency Ordinance No. 240.2 declaring a water shortage and adding supplemental water use restrictions to the Municipal Code as required by State law; and

**WHEREAS**, on March 17, 2015, the State Water Resources Control Board adopted Resolution No. 2015-0013 adopting an emergency regulation for Statewide urban water conservation requiring water retailers to implement additional conservation measures as part of their Water Shortage Contingency Plans; and

**WHEREAS**, on March 24, 2015, the Santa Clara Valley Water District (one of the City of Milpitas water suppliers) requested mandatory thirty percent (30%) conservation reflecting its supply conditions with the continued drought conditions in the State of California; and

**WHEREAS**, on April 1, 2015, the Governor declared a requirement of Statewide twenty-five percent (25%) mandatory reduction with enforcement regulations; and

**WHEREAS**, on April 15, 2015, the San Francisco Public Utilities Commission (another City of Milpitas water supplier), declared a water supply shortage and requested ten percent (10%) voluntary conservation reflecting its supply conditions; and

**WHEREAS**, on May 5, 2015, the State Water Resources Control Board adopted additional emergency regulations for Statewide urban water conservation requiring water retailers to implement additional conservation measures as part of their Water Shortage Contingency Plan, assigned a water conservation target to water retailers such as Milpitas, and imposing fines if retailers exceed their targets; and

**WHEREAS**, on May 12, 2015, the Santa Clara Valley Water District adopted a wholesale water rate structure that includes a 10% penalty for water volume purchased above the contract amount; and

**WHEREAS**, drought conditions that formed the basis of the Governor's Emergency Proclamations continue to exist and the drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to further promote conservation; and

**WHEREAS**, the City Council of the City of Milpitas declares the continuation of a water shortage for the year 2015 (Stage 2 of the Milpitas Water Shortage Contingency Plan) and add these additional conservation measures as required by State law; and require the community to implement water conservation measures with a goal of reducing consumption by thirty percent (30%); and

**WHEREAS**, in light of the continued water supply shortage in the State of California as set forth above, the City Council must take such action to be effective immediately and to do so requires an urgency ordinance to preserve the public peace, health and safety of its residents; and

**WHEREAS**, in accordance with Water Code Sections 350 et seq., 375 et seq., and the laws and regulations cited above, the full text of this Ordinance was posted in the City Clerk's Office at least five (5) days prior to the public hearing and will be published in a newspaper of general circulation within fifteen (15) days of adoption of this Ordinance.

**NOW THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

## **SECTION 1. RECORD, BASIS FOR ACTION AND FINDINGS**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above and the findings and justifications in the supporting staff report for this Ordinance are found to be true and correct and are incorporated herein by reference and adopted as the findings of this City Council.

## **SECTION 2. AMENDMENT OF MUNICIPAL CODE TITLE VIII, CHAPTER 6**

Section VIII-6.500 of the Milpitas Municipal Code is hereby amended to read as follows:

### **VIII-6-5.00 Supplemental Water Use Restrictions**

Notwithstanding Section VIII-6-3.00 or any other provision of the Municipal Code, the following uses of Potable Water are prohibited:

- 5.01 Use of Potable Water for cleaning of any hard surfaces, such as sidewalks, streets, buildings, and parking lots.
- 5.02 Use of Potable Water for construction purposes including dust control and compaction.
- 5.03 Construction of new swimming pools or ponds not currently permitted.
- 5.04 Use of Potable Water for cleaning, filling, or operating water features, such as decorative fountains.
- 5.05 Use of Potable Water for irrigation of golf courses, except greens and tees area.
- 5.06 Use of Potable Water for watering or irrigation of any plants, lawn, grass, landscaping or turf areas except between the hours of 6:00 A.M. through 10:00 A.M. and 7:00 P.M. through 9:00 P.M., adjusted for Daylight Saving Time, and for no more than two (2) days during any seven (7) day period. The days of watering shall be:

Address Ending in Odd Number - Monday and Thursday  
 Address Ending in Even Number - Tuesday and Friday  
 No address - Monday and Thursday

Use of Potable Water for short periods during timer adjustment and repair of irrigation system are exempt from the time and day restriction set forth above. The Director of Engineering is also authorized to approve a variation of the time and day schedule restriction, provided the variation meets the required reduction above of only two (2) days in any seven (7) day period.

- 5.07 Use of Potable Water for installation of new landscape unless served by Reclaimed Water.
- 5.08 Exceptions to the prohibitions enumerated in 5.01 through 5.07 may be granted in the discretion of the City Council.

Title VIII, Chapter 6 of the Milpitas Municipal Code is hereby amended to add new Sections 6, 7, 8 and 9 to read as follows:

#### VIII-6-6.00 Additional Supplemental Water Use Restrictions

Notwithstanding Section VIII-6-3.00, Section VIII-6-5.00 or any other provision of the Municipal Code, the following uses of Potable Water are prohibited:

- 6.01 The application of Potable Water to outdoor any plants, lawn, grass, landscaping or turf areas during and within forty-eight (48) hours after measurable rainfall.
- 6.02 To promote water conservation, owners and operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.
- 6.03 Newly constructed homes and buildings shall be designed with drip or microspray irrigation systems, provided any new landscaping shall continue to be restricted from installation during the declared drought as set forth in Section VIII-5-5.07.
- 6.04 The application of Potable Water to street medians containing ornamental turf.
- 6.05 Hydrant flushing, except for health and safety purposes.
- 6.06 Pools and spas shall be covered when not in use to prevent evaporation.
- 6.07 The prohibitions enumerated in 6.01, 6.03, and 6.04 do not apply to any water treatment features, such as landscaping and green roofs, to meet the requirements of Municipal

Regional Stormwater National Pollutant Discharge Elimination System Permit No CAS612008, C3 Provision.

- 6.08 Exceptions to the prohibitions enumerated in 6.01 through 6.06 may be granted in the discretion of the City Council.

#### VIII-6-7.00 Drought Penalties

##### 7.01 Residential Properties

- a. The following penalties will be imposed to residential customers who fail to limit their use:

Residential Water Tiers	FY15/16 Rate	Penalties
1. 0-10 hcf	\$3.62	No Penalty
2. >10 – 20 hcf	\$4.80	No Penalty
3. >20 – 30 hcf	\$6.47	No Penalty
4. > 30 hcf	\$7.30	+10 %

FY = Fiscal Year

1 hcf = One Hundred Cubic Feet = 748 Gallons

##### 7.02 Commercial, Industrial and Institutional Properties

- a. Commercial, industrial, and institutional accounts shall be assigned water allotments equal to ninety percent (90%) of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to commercial, industrial and institutional customers who fail to limit their use within the assigned allotment:

	FY15/16 Rate	Penalty
Commercial / Industrial / Institutional / Construction Meter	\$7.30	+10%

FY = Fiscal Year

1 hcf = One Hundred Cubic Feet = 748 Gallons

##### 7.03 Irrigation Accounts

- a. Irrigation accounts shall be assigned water allotments equal to fifty percent (50%) of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to irrigation customers who fail to limit their use within the assigned allotment:

	FY 15/16	
	Rate	Penalty
Irrigation (potable)	\$7.30	+10%

FY = Fiscal Year

1 hcf = One Hundred Cubic Feet = 748 Gallons

- 7.04 The Drought Penalties set forth in this Section will be imposed in addition to the customer's normal rates charged pursuant to Section VIII-1-6.13 of the Municipal Code, as may be amended.
- 7.05 The Director of Engineering is authorized to assign allotments for water accounts that did not exist in 2013 or had a change in land use based on review of similar types of properties and uses.
- 7.06 The FY 15/16 water rates are shown here for convenience only and the real values shall be as set forth in Section VIII-1-6.13 of the Municipal Code, as may be amended.

#### VIII-6-8.00 Non-Compliance

Any violation of this Chapter shall be subject to the penalties provision set forth in Section I-1-4.09 (Penalty Provision), Section V-500-8.00 (Administrative Citation), or any other penalty provisions in the Municipal Code or State law.

#### VIII-6-9.00 Applicability

The prohibitions and rationing requirements identified in this Chapter are not applicable to fountains, irrigation systems, cooling towers, and dual-plumb sites that use non-potable water such as recycled water.

### SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part shall not affect the validity of the remainder.

### SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with California Government Code Sections 36934 and 36937, this Ordinance is effective immediately upon adoption by the City Council as an Urgency Ordinance. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.